

STATE OF IDAHO, DEPARTMENT OF LANDS  
USDA FOREST SERVICE  
NORTHERN REGION AND INTERMOUNTAIN REGION  
ROAD RIGHT-OF-WAY  
CONSTRUCTION AND USE AGREEMENT  
AND  
COOPERATIVE ROAD MAINTENANCE AGREEMENT

## **ROAD RIGHT-OF-WAY CONSTRUCTION AND USE AGREEMENT**

THIS AGREEMENT is entered into this 13<sup>th</sup> day of January 2003, by and between the State of Idaho, Department of Lands, hereinafter referred to as Cooperator, and the United States of America, in accordance with the Act of October 13, 1964 (78 Stat. 1089; 16 U.S.C. 532-538), by and through the Regional Foresters, Forest Service, Department of Agriculture, hereinafter referred to as Government.

WHEREAS, there is an area within and adjacent to certain National Forests of the Northern Region and Intermountain Region, USDA Forest Service and situated in the State of Idaho, hereinafter called the Agreement Area, and to be known as the State of Idaho Agreement Area, within the boundaries of which the parties have need for establishing access roads to their intermingled land ownerships for managing, protecting, and utilizing resources there from; and

WHEREAS, Government and Cooperator desire to join in developing and maintaining such roads serving their ownerships and to share costs thereof;

NOW THEREFORE, in consideration of the mutual benefits to be derived, the parties agree as hereinafter set forth.

### **Section 1 - Agreement Supplement Prerequisite to Joint Financing of Roads**

In order for roads which are constructed hereafter or which are already constructed within the Agreement Area to be jointly financed, there must be mutual agreement, prior to construction or prior to use by the other party of roads already constructed by one party, on each of the elements set forth in Section 2 hereof, which agreement will be expressed in a consecutively numbered supplement substantially in the form of Exhibit A attached hereto.

### **Section 2 - Necessary Elements of Agreement Supplement**

The elements to be agreed upon for a road to be jointly financed are:

- a. Identification by name or number of road or roads to be included, along with a map or plat showing as accurately as necessary for the road involved its location and length, all in accordance with procedures prescribed in Section 3 hereof.
- b. Plans and specifications for roads to be constructed, or reconstructed.
- c. Scheduling of construction or reconstruction, if any, and designation of party to perform such construction or reconstruction.
- d. Estimated costs of construction or reconstruction based on engineering appraisals mutually agreed to, both for roads built and to be built, but subject always to the

limitation expressed in Section 4 hereof; if the project is to be accomplished by contract, the costs may be determined on the basis of the lowest acceptable bid.

e. Proportion of estimated costs to be borne by each party determined by application of the principles stated in Section 5 hereof.

f. Provision for each party's meeting its share of the cost, based upon methods provided in Section 6 hereof.

### Section 3 - Road Construction or Existing Road Plans

When either party is considering the construction of a road within the Agreement Area that may provide access to or otherwise effect the other party's ownership, it will give notice in writing to the other party accompanied by a map showing the approximate location of the proposed road. If either party is considering sharing in an existing road previously constructed by the other party, such party shall give written notice to the other party accompanied by a map showing the approximate location of the existing road proposed for sharing. Within no more than sixty (60) days after receiving such notice, the other party will inform the initiating party whether it is interested in having the road constructed as a jointly financed road. For existing roads proposed for sharing, such notice shall also be responded to within no more than sixty days after receiving such notice. Appendix II contains a critical path schedule for the sharing process.

If the road is not to be a jointly financed road, the initiating party may proceed as provided in Section 13 hereof.

If the road is to be jointly financed, the initiating party will tentatively locate the road or cause it to be located and plainly marked on the ground. When a location has been so marked, notification in writing will be given to the other party. Promptly thereafter, the route will be jointly inspected and agreed upon and arrangements made for submission by the initiating party to the other party of such surveys, plans, and construction details as the parties agree are necessary. Agreement on location shall not be unreasonably withheld nor conditioned by the other party upon either a relocation or incorporation of features that add substantially to construction costs without a substantial and demonstrable benefit being preserved or created in return.

The parties will promptly schedule any necessary and required environmental review and analysis; and coordination and/or consultation with other regulatory agencies. The parties will also agree upon the responsibilities of the parties including financial responsibilities to accomplish such environmental reviews and regulatory requirements. When environmental analyses, reports, or other associated documents are submitted by one party to the other for review, such review and appropriate response shall be made within, but not more 60 days from receipt of such material submitted for review.

Refer to Appendix I for Endangered Species Act and other environmental review provisions.

Final approval of surveys, construction plans, right-of-way description and estimated construction costs shall be made in writing by the other party promptly after such submission and within sixty (60) days of submission, or if approval is withheld for reasonable cause, the parties shall attempt to achieve agreement. Once the plans and estimated construction costs are agreed upon, the basis for cost sharing, if not previously agreed to, and the method of paying shared costs shall be negotiated and upon completion of any necessary or required environmental reviews and other regulatory coordination the agreement supplement referred to in Section 1 shall be executed.

#### Section 4 - Limitation on Cost Sharing for Roads

A party's right to participate in joint financing of a road within the Agreement Area and to enjoy the benefits of this agreement with respect thereto shall not be conditioned upon assumption of any more than that party's proportionate share of the estimated costs for constructing roads needed to serve the area of both parties tributary to the roads.

#### Section 5 - Basis for Cost Sharing

For all roads to be jointly financed within the Agreement Area the basis for sharing will be determined in each supplement by application of the following principles:

a. Anticipated use of the roads will be allocated to the parties in proportion to the acres of lands tributary to the roads which are owned or controlled by each party; provided, that use attributable to nonparticipating parties will be allocated to Government unless otherwise agreed.

Refer to Appendix II attached hereto and made a part hereof for expanded application of these principles.

#### Section 6 - Methods of Sharing Costs

The share of estimated construction costs to be borne by each party for each jointly financed road under this Agreement, whether the road is already constructed or is to be constructed, may be amortized by any one or a combination of the following methods:

a. By a party's performing or having performed construction or reconstruction on the jointly financed road to the extent of its share.

b. By a party's performing or having performed construction or reconstruction on another jointly financed road within an agreement area in excess of its share for that other road.

c. By a party's depositing funds with the constructing party either at the outset or as construction or reconstruction progresses or upon completion of construction, as the parties agree.

d. By haulers paying, at rates mutually agreed upon, as timber or other products from Government lands are transported over the roads constructed or reconstructed by Cooperator. Such payments shall be collected by Government and paid to Cooperator.

e. By haulers paying, at rates mutually agreed upon, as timber or other products from Cooperator's lands are transported over the roads constructed or reconstructed by Government. Such payments shall be collected by Cooperator and paid to Government.

#### Section 7 - Right-of-Way Conveyances

As soon as the roads are located and the agreement supplement has been executed as above provided, each party will grant easements, following appropriate agency review and authorization, to the other for such roads and concomitant rights-of-way across lands or interests in lands each may own. Easements will be in substantially the form attached hereto as Exhibits B and C. Either party will issue when requested a permit in lieu of an easement.

#### Section 8 - Road Construction, Inspection, and Acceptance

The parties agree that written acceptance of road work by both parties is essential to the accomplishment of the cooperative objective. Each party will keep the other informed of construction progress, and the other will make periodic inspection as it deems necessary and will currently raise in writing any objections to the work performed. Right-of-way timber shall be disposed of as provided in the easements or permits unless otherwise agreed.

Ten days prior to the expected completion of any construction, the constructing party will give written notice as to the completion date of a project, and the other party will, within thirty days after receipt of the notice, make a final inspection and give written notice of rejection or acceptance of the project. If weather or other conditions prevent inspection within said thirty-day period, the time during which such conditions prevail will be excluded in determining the thirty-day period. Rejection may only be based upon failure to comply with the stated plans and specifications. A rejection notice will identify the items of work to complete the project in accordance with the stated plans and specifications. Acceptance shall not be unreasonably withheld. In case of rejection, the items of work identified in the notice will be promptly done; thereupon the road shall be deemed accepted.

## Section 9 - Maintenance

Maintenance shall be performed on jointly financed roads in accordance with the easements or permits granted in accordance with Section 7 herein, pursuant to a road maintenance agreement separately entered into and in accordance with the annual maintenance plan made at the annual meeting as provided for in Section 12 hereof. Use by a party's licensee will be the maintenance responsibility of that party. Maintenance shall be performed so as to preserve the road to standards of original construction or reconstruction.

## Section 10 - Additional Capital Expenditures

If exhaustion or severe damage or destruction occurs to any portion of a road jointly financed under this agreement, or if it is mutually agreed reconstruction or betterment of a road is needed, the parties will endeavor to agree upon: (1) the work to be performed, and (2) the share of cost to be borne by each. Agreement shall be expressed in a supplement substantially in the form of Exhibit A.

It is intended that the share of the cost to be borne by each party shall be determined by application of the principles stated in Section 5. Except that, restoration work needed within 5 years of the construction or reconstruction of a road shall be shared using the shares in the Supplement by which the work was agreed upon. Payment of shares shall be by any one or a combination of the methods stated in Section 6.

## Section 11 - Annual Accounting

A mutual accounting by the parties to this agreement shall be made as of each December 31.

The accounting will determine the debits and credits accrued on a commitment and earned basis by each party in the year just completed with respect to their obligations under this agreement for new construction, reconstruction, and restoration involving capital expenditures. Any failure by either party to meet its commitments in any supplement in a timely fashion should be identified and remedial action taken to reduce delays in meeting commitments. Excess cost balances shall be managed to a level consistent with the size of the cost share program and an Excess Cost Management Plan shall be maintained with the goal of amortizing all excess costs within five years of the date such excess cost debits and credits are incurred. Amortization of excess cost by subsequent supplemental agreements shall endeavor first to amortize the oldest outstanding debits. However in such cases where amortization involves cash payments either through appropriated funds, cash deposits, or by collection rights, such payments shall only be made against outstanding debits accrued on an earned basis only.

The accounting will also determine the debits and credits accrued by each party during the year just completed with respect to their agreed maintenance obligations for roads in the Agreement Area and will achieve a net balance for the year between the

parties with respect to maintenance matters. Maintenance obligations shall be planned, managed and balanced first at the Forest Supervisor Office and appropriate State Office level. If obligations and balances at the local level become disproportionately unbalanced, then the parties will look to balance obligations at the Agreement Area level. Any outstanding obligations incurred under any prior road maintenance agreements to be included under this agreement shall be determined and documented, and resolution as to the disposition of such obligations shall be agreed upon within one year of inclusion under this agreement. In those areas where deposits are not being made for the cost of deferred maintenance, the shares incurred by the parties will be agreed to and documented in writing.

## Section 12 - Annual Meeting

On or before the 1<sup>st</sup> day of April of each year, the parties shall meet to apprise each other of their logging and use plans and of anticipated road construction or reconstruction needs for the coming year toward the objective of efficiently developing the agreement area.

Each party will make available for examination or provide a long term plan, covering the next 3 or more years to the other party or parties to the agreement. The plan shall be in accordance with the jointly developed long-term transportation plan for the area and include anticipated sales areas, road construction or reconstruction, seasons and volume of haul, and any other information that will affect the joint development and use of the road system in the agreement area.

At such annual meeting, the parties will also agree on and document in writing the annual maintenance plan for the coming season. The annual maintenance plan will use the Road Maintenance Agreement as a reference, and include the following information:

- a. The anticipated volume of traffic, the type of vehicle use (such as load height, weight, and width), the conditions of use, provisions for preventing or repairing major damage caused by use, the work to be performed, and estimated cost of doing it.
- b. The method of measuring total use and the means of apportioning such total use to each party in order to comply with the easements or permits covering jointly financed roads within the agreement area.
- c. Designation of the maintainer and roads, road segments, and classes of work for which the maintainer is responsible.
- d. How the planned program is to be financed.
- e. Scheduling of a maintenance field review as determined by the parties.

The annual maintenance plan shall also include provisions for maintenance on roads in storage and, when appropriate, deferred maintenance work to be performed.

### Section 13 - Roads Not Jointly Financed

When a party desiring to construct a particular road or road segment is informed by the other party that it has no need for the road and will not share construction costs, the initiating party may proceed alone. It will prepare maps showing the proposed location of the road or road segment on the land of the other party and will furnish such maps to the other party along with construction specifications and a description of the proposed location. The parties will promptly schedule any necessary and required environmental review and analysis; and coordination and/or consultation with other regulatory agencies. The parties will also agree upon the responsibilities of the parties including financial responsibilities to accomplish such environmental reviews and regulatory requirements. Upon completion of any necessary or required environmental reviews and other regulatory coordination, final approval of surveys, construction plans, and right-of-way description shall be made in writing by the other party promptly after such submission and within sixty (60) days of submission, or if approval is withheld for reasonable cause, the parties shall attempt to achieve agreement.

The other party will then promptly issue a permanent easement in the appropriate form attached hereto, marked Exhibits D and E for a road considered permanent by the initiating party, or will issue a permit in the form attached hereto marked Exhibits F and G for a road considered temporary by the initiating party. The other party may refuse to issue the easement or permit for the proposed location only if the proposed location would unreasonably conflict with existing or planned facilities or improvements, or would unduly interfere with logging of the said party's timber, or if the proposed location or construction specifications are not adequate to prevent undue damage to adjacent resources or values. In the case of a refusal for such reasons, the parties will endeavor to agree upon a reasonable and practicable alternative route or change in specifications.

### Section 14 - No Rights of Use Without Cost Sharing

Except as provided in the easement, permit, or other title document, a party who has not shared in costs of constructing a road or a road segment on lands of either party within the Agreement Area, in accordance with Section 4 and Section 5 herein, shall make no use of the road or road segment until it pays or makes arrangements acceptable to the other party to pay its share in accordance with Section 6. A party shall at all times have the right to acquire rights of use in a road or road segment within the Agreement Area in accordance with the principles for sharing costs stated in Section 5 and by one or more of the methods of payment prescribed in Section 6.

### Section 15 - Rights of Entry Upon Land of Other Party

Either party, upon giving notice in writing to the other party, shall have the right to go and be upon the lands of the other party within the Agreement Area to the extent necessary for purposes related to or connected with this agreement.



## Section 16 - Change in Ownership

When a change in ownership of a party's lands involved in this Agreement or affected by this Agreement is contemplated or planned (disposal or acquisition of lands), the party contemplating or planning such transaction shall notify the other party of the anticipated action prior to the transaction. Such advance notification shall occur sufficiently prior to the contemplated transaction to allow the parties to identify and resolve outstanding obligations and other actions necessary by the parties as a result of the land transaction. Advance notification of such land transactions shall be at least 90 days prior to culmination of the land transfer. Appendix II, Section IX contains detailed direction to be addressed when a land transaction is contemplated or planned which involves this Agreement and the roads and road rights of ways associated with it.

When a transfer of ownership of a party's lands within the Agreement Area occurs, the parties shall update all records for the affected roads and all outstanding obligations as of the date of conveyance attributable to such lands are to be satisfied by payment or other provisions between the parties hereto. Identification and agreement on resolution of outstanding obligations resulting from a planned transfer of ownership shall occur prior to such transfer of ownership and final resolution of such obligations shall occur within one hundred and eighty days of such transfer. If weather or other conditions prevent final resolution within said one hundred and eighty day period, the time during which such conditions prevail will be excluded in determining the one hundred and eighty day period. Assignment of any obligations or debits to a new landowner resulting from such transfer of ownership shall require written authorization of the parties and shall be in a form suitable for recordation.

## Section 17 - Termination

This agreement may be terminated by either party upon at least ninety (90) days prior written notice, except that such termination shall in no way affect any permit, right-of-way grant, or easement deed that may have been executed by either party hereto prior to such notice, or any other operations dependent upon its continuance, which are in progress at time of notice; provided, that such termination shall in no way affect the agreement of the parties hereto with respect to any obligations incurred under this agreement until a full settlement has been made.

## Section 18 - Federal Requirements

No resident commissioner nor member of or delegate to Congress shall be admitted to any share or part of this agreement or to any benefits that may arise there from unless this agreement is made with a corporation for its general benefit.

Where applicable any contract, agreement, or understanding entered into pursuant to this agreement providing for work to be performed shall include the requirements of Federal laws, Executive Orders, and regulations except that no present or future administrative rules or regulations shall reduce the rights herein.


## Section 19 - Notices and Payments

Until notice is given by either party to change the address for delivery of notices and payments, all notices and payments to Cooperator shall be delivered to the applicable State of Idaho, Department of Lands Area Office and all notices to Government shall be delivered to the Forest Supervisor of the administering National Forest, and all payments to Government shall be delivered to the Collection Officer at the same address.

IN WITNESS WHEREOF, the parties hereto have caused this Road Right-of-Way Construction and Use Agreement to be properly executed by their authorized representatives on the day and year first above written.

STATE OF IDAHO,  
DEPARTMENT OF LANDS

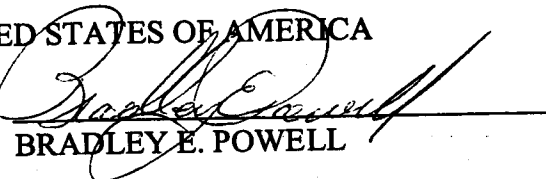
By

  
WINSTON A WIGGINS

Title Director, Idaho Department of Lands

UNITED STATES OF AMERICA


By

  
BRADLEY E. POWELL

Title Regional Forester  
Northern Region, Forest Service

Department of Agriculture

By

  
JACK G. TROYER

Title Regional Forester  
Intermountain Region, Forest Service

Department of Agriculture

THE AUTHORITY AND FORMAT OF THIS INSTRUMENT  
HAS BEEN REVIEWED AND APPROVED FOR SIGNATURE

  
AGREEMENTS COORDINATOR

DATE